App. F. IX-4

1927-28 (R.A.)

File No. 89-26

Serial Nos. 1-9

Previous References
R.A 36-26-3
" 34-26-4
" 34-26-2

P 54E

Later References
R.A 7-28-(1 to 2)

General and Revenue Secretariat.

Serial Nos. Nine

Part B for May 1928.

SUBJECT

Appeal petition of Mr. G. Rajagopalachar, Advocate, Dumkur re the election to the Rep. Assembly from the Gubbi Urban area held in March 1927 and Revenue petition thereafter

4) To Mr. G. Rajagopalachar, Advocate, Dumkur
No. 210 & 1.10.1927
Dismisses his appeal petition (Sl 1) against the order of the D.C. Dumkur rejecting his objection petition regarding the election of Mr. G.S. Murigappa to the Rep. Assembly from the Gubbi Urban Constituency.

9) To the D.C. Dumkur with records
" Mr. G. Rajagopalachar, Advocate, Dumkur
" Mr. G.S. Murigappa, Pleader, Gubbi
L.O. No Rel 825-7 & 26.5.1928.

Henriques Dismisses the revenue petition preferred by Mr. G. Rajagopalachar
20/6/28 (Sl 5) for reasons stated.

G. R. S. 11)

1926-27

(1

GENERAL AND REVENUE SECRETARIAT.

(RA)

NOTES.

File No. 89-26

FILE HEADING.

Appeal petition of Mr. G. Rajagopalachar of Gubbi (Advocate Tumkur

From

Mr. G. Rajagopalachar, Advocate Tumkur

No. Petn Dated 20.6.27 Received 25.6.27

Diary No. 6024 RA	Enclos. - Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Appeals against the order of the Deputy Commissioner Tumkur Dt in Election Case No. 12/12/26-27 Dt and requests that the decision of the Deputy Comm^r may be set aside with costs, if any and that he may be declared duly elected.

NOTES AND ORDERS.

Submitted.

Mr. G. Rajagopalachar Advocate Tumkur who was one of the candidates at the general elections for in the Gubbi Rural Constituency has appealed against the order of the Deputy Commissioner declaring the election of Mr. G. S. Murigappa as valid on

App. F. III—2]

REV 1024 2

General and Revenue Secretariat.

A1 File No. 89 of 1926.

Serial No.	
	the grounds set forth in the petition 3 Draft forwarding the petition in — original, for an immediate report with records is submitted for approval SA 25/6 DR 28.6.27 the Records with report may be called for SA 26/6 Secy Rev) 27.6.27 DR 28/6 SA 28/6 May the draft in the file issue SA 29/6 Issue SA 29/6
2	To the D. C. Dumka Letter no. 5627 of 30.6.27. Forwards the appeal petition for and calls for report with records.
3	From the Deputy Comr. Dumka dy No: A2 28—27—28 D/8.7.27. Submits the entire records connected with the case above case. Submitted for perusal & orders. The Deputy Commissioner's finding fully deals with the evidence of several witnesses.

NOTE—Contn. sheet.

WD 2293—GPB—10,000—4-5-27

App. F. III—2]

(3

General and Revenue Secretariat.

File No. 89 of 1926

Serial No.

the Dy Comr
and he comes to the conclusion that none
of the grounds put forward by the
petitioner are maintainable.
Submitted for orders with the appeal petition
duly flagmarked—

13/7 SR

13-7-27

M.T.O.

NOTE—Contn. sheet.

WD 2293—GPB—10,000—4-5-27

General and Revenue Secretariat. | File No. 89 of 1926

Serial No.

1. This is an appeal against the order of the Deputy Commissioner rejecting the objection petition of Mr. G. Rajagopalachar, Advocate, Tumkur, regarding the election of Mr.G.S. Murigappa, Pleader of Gubbi, to the Gubbi Urban area at the general election to the Representative Assembly held on 12th March 1927. The facts of the case are that five candidates stood for election to the Representative Assembly, namely, Messrs. G.S. Gangappa, Honne Gowda, G.S.Murigappa, G. Murigappa and G. Rajagopalachar. Out of these, Messrs. Honnegowda and G. Murigappa withdrew before the election. There were thus three candidates who contested the seat. 385 votes were recorded and out of these 35 were found to be invalid by the Amildar who was the Polling Officer, for various reasons. The result of the election was that Mr.G.S. Murigappa had secured 130 votes, Mr.G. Rajagopalachar 126 votes and the other candidate 93 votes. Mr.G.S. Murigappa having secured the largest number of votes was declared duly elected. As against the election of Mr. G.S.Murigappa Mr. Rajagopalachar lodged an objection petition before the Deputy Commissioner of Tumkur on alleging the following four grounds;-

(1) The Polling Officer illegally rejected as invalid some of the valid votes.

(2) The Polling Officer illegally prevented from voting several persons who had come to vote

NOTE—Contn. sheet.

WD 0321 -GPB—60,000—21 5 27

Serial No.

for the petitioner although their names were printed in the electoral roll and were duly identified.

(3) The opponent Mr.G.S. Murigappa by himself and through his agents hired carts and brought in them several voters and paid the hire amount himself.

(4) The opponent by himself and through his agents brought to bear undue influence on, and also held out threats to several voters as a result of which the petitioner lost a number of votes.

The Deputy Commissioner held an inquiry and examined 6 witnesses on behalf of the petitioner and five witnesses on behalf of the opponent.

As regards the first ground the petitioner's contention is that the voting papers, Exhibits 2, 3, 4 (a), 4 (b) 5, 6 and 7 should not have been disallowed merely because they were not marked in the manner required by the orders of Government. The instructions given on the back of the voting papers show that the names of those for whom the voter does not wish to vote should be scored out in blue or red pencil and the names of those for whom he wishes to vote should be retained. A perusal of the Exhibits relied upon by the petitioner will show that they have been rightly declared as invalid as decided by the Deputy Commr. For Exhibit 2 shows that 3 names are left in tact instead of one & the names of both the successful candidates are left in tact. In Exhibit 3 not a single name is scored out and something is written

H : I.

NOTE—Contn. sheet.

Serial No.

on the name of Mr. G.Rajagopalachar. In Exhibit 4A not a single name is scored out but against the -- name of Mr. Rajagopalachar a cross mark is placed. In Exhibit 4 (b) not a single name is scored out. In Exhibit 6 names of all the candidates are scored out. In Exhibit 7 names of 3 candidates are scored out and those of 2 are left in tact. In Exhibit 5 the names of 3 candidates are scored out and some mark is placed against 3. So since the marking of these papers was not in accordance with the instructions given behind the voting paper and also not in -- accordance with the instructions given under the G.O. No.Rel.757-800-M.A. dated 26th February/1st March 1927 they were rightly rejected as invalid. The Deputy Commissioner has accordingly held that Exhibits 2,3,4 (a),4(b),5,6 and 7 are invalid.

R.A 36-26-3

With regard to the second ground the Deputy Commissioner has found that the alleged charge of intimidation of voters has not been established. on the ground that the petitioner had no direct -- knowledge of it but he only heard of it from others The Deputy Commissioner does not believe the evidence of petitioner's witnesses Ganganna Gowda and Nanjappa on the ground that the first is a -- client of the petitioner and the second was an -- opponent to the successful candidate over the question of animal sacrifices at the local Marijatra. The Deputy Commissioner does not believe the explanation of the persons alleged to have been intimidated that they were not likely to come out with

NOTE—Contn. sheet.

Serial No.

the truth. It was also elicited that the persons who gave the information with regard to the intimidation were not shown to be voters. The Deputy Commissioner has therefore held that the allegation of intimidation has not been established.

14 With regard to the 3rd ground, Bhadramma and Mallamma the persons alleged to have been taken by the opponent in hired carts were examined and they denied the allegation that they went in the carts hired by the opponent. In fact they seem. Contrary to they to have walked to the voting place. The cartmen were not examined as witnesses. The two witnesses Gangappa and Nanjappa who speak on this point are not definite in their statement.

With regard to the last point it would appear from the report of the Amildar (Flag Q) that those whose names were not in the Electoral Roll or were not identified as voters were not allowed to vote. The Deputy Commissioner has held that the Polling Officer was justified in his action., He has therefore not interfered with the election of the --- opponent, Mr.G.V. Murigappa. The petitioner has appealed to Government against this order of the Deputy Commissioner. He alleges in the appeal - memo the same grounds as he alleged before the Deputy Commissioner and no new grounds are alleged. It is submitted from a careful scrutiny of the xxx evidence adduced and the Exhibits filed on both sides the decision arrived at by the Deputy Commr. seems to be correct.

NOTE—Contn. sheet.

WD 0321.-GPB-60,000-24.5.27

Rev. 1 8

17-9-27 App. F III—2]

General and Revenue Secretariat.

File No. 89 of 1926

DEWAN'S OFFICE. Received on 22. SEP. 1927 No. 2147

Serial No.

16 I agree with the views expressed in the Secretariat note. The appeal may be dismissed

Third Member

Dewan.

17/9

17 I agree

18/9

19/9

21/9.

Dewan)

24/9

18

22-9-27

19 Please issue order

21/9

2

20 Draft submitted for approval

29/9 24-9-27

30/9/27

21 appd

30/9

22

30/9

OFFICE OF THE THIRD MEMBER OF COUNCIL 19 SEP. 1927 No. 2125

OFFICE OF THE SECRETARY 28. SEP. 1927 REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

To Ins for draft

NOTE—Contn. sheet

WD 0321—GPB—60,000—24-5-27

55 & 56 (9)

App. F.—III.—2]

General and Rev. Secretariat. R.A. File No. 89 of 1926-7

Serial No.	
4	To mr. G. Rajagopalachar, Advocate Trichur Dt. 21.10.27. Dismisses his appeal petition against the order of D.C. Trichur rejecting his objection petition regarding the election of mr. G.S. Menezappa to the Leg. Assembly from the Hubli Rural Constituency.
5	From Mr. G. Rajagopalachar, Hubli Petition Dt 3.10.27 States that the decision of Government is unjust & inequitable & prays that it may be reversed & he may be heard & Orders passed before Dated 7th Instant
6.	From the same petitioner Dt 3.10.27 Sends duplicate petition in the same matter Submitted for orders.

4/10 Secy-D) 8/10

24 I find that the decision in the case turns entirely on the interpretation to be placed on the language of the rule & on the intention of the voter as indicated by his acts & by the manner in which he has marked the voting paper. Since the records are sent back, they may be sent for.

8/10

NOTE—Contn. sheet

WD 0324—GPB—60,000—21-5-27

Election from Gubbi Urban area (10

App. F. III—2]

F. 2

General and Revenue Secretariat.

File No. 89 of 1927.

Serial No.	
	3 Draft submitted.
	6/10 26 June 6/10
7	To D.C Tumkur letter no. 1479 & 7.10.1927 Requests that the records connected with the Election petition of Mr. R. Rajagopalachar may be sent to this office.
8	From the Dy Commissioner Tumkur No. A2-302-26 dt 7.10.27 Submits the file of records received with letter No. Del 211 dt 30.9.27 relating to the election of Member from the Gubbi Urban area & Ra
	27 Submitted for orders. 10/10/27 (Leg & D) 10/10
	Please Scrutinize the votes in dispute & bring it. 21.10.27
	28 Submitted.
	30 The Dy Comr Shimoga, (Mr. B.T. Keshavanjan) reported in March 1927, solicited (in March 1927) instructions as to whether the non-scoring out of the names, where only Symbols have been struck off

R.A 34-28-3

NOTE—Contn. sheet

WD 03M—GPB—160,000—24-5-27

General and Revenue Secretariat. File No. 89 of 1927.

Serial No.

would amount to a material irregularity rendering the Votes invalid.

Telegraphic instructions were issued thereupon (with the approval of the Dewan and 1st Member of Council) to all Deputy Commissioners & Presidents of Rangachi & Rayanchi that Leaving out Names or Symbols or both in the voting paper is sufficient to constitute a valid vote.

Flag J. (Ins. A 34-26-4)

32 Examining the Votes now in dispute in the light of these instructions, it is found as follows:—

1) Voting paper No. 341, Exhibit 2. The Symbol & Name of Mr. G. Rajagopalachar has been retained. This vote is valid & goes to Mr. G. Rajagopalachar

2) Voting paper No. 122. Exhibit 3. The Name of Rajagopalachar has been written in blue pencil by the Voter. The intention of the Voter is thus clear. This vote has to be considered valid & goes to Mr. G. Rajagopalachar

3) Voting paper No. 155. Exhibit 4. A cross mark has been placed near Mr. Rajagopalachar's name. Intention of the Voter is therefore clear. This vote is valid & is in favour of Mr. G. Rajagopalachar.

4) Voting paper No. 112 Exhibit No. 4a. A cross mark has been placed near the

NOTE—Contn. sheet

WD 0321—GPE—60,000—21-5-27

General and Revenue Secretariat. File No. 89 of 1927

Serial No.

Symbol opposite Mr. G. Raja-Gopalachari's Name. The intention of the voter is therefore clear. This may be considered a valid vote in favor of Mr. G. Rajagopalachari.

5) Voting paper No. 157 Exhibit 5.
A cross mark has been placed near Mr. G. S. Murugappa's Name, & the Names of Messrs G. Rajagopalachari & [illegible] have also been retained. As the voter has retained more than one Name, this vote has to be considered invalid.

6) Voting paper No. 308, Exhibit 6
All Names except that of Mr. G. Raja Gopalachari have been scored out. It is clear therefore that the voter voted for Mr. G. Rajagopalachari whose Name has been retained. This may be Considered Valid in favor of Mr. G. Rajagopalachari.

7) Voting paper No. 464. Exhibit 7
The Names of Mr. Gangappa & Mr. G. Raja Gopalachari have been retained & others scored out. As Mr. Gangappa has withdrawn, it is to be considered that the voter has voted for Mr. G. Rajagopalachari.

8) Voting paper No. 58, Exhibit 8,
The Names of Messrs G. S. Murigappa & G. Rajagopalachari have been retained & the Voter has voted for more than one person.

NOTE.—Contn. sheet

WD 0214—APB—60,000—24-5-27

58 (13

Tue App. F. III—2]

General and Revenue Secretariat.

File No. 89 of 1926

Serial No.

This vote is to Considered invalid

9) Voting paper No. 61. The Names of (Exhibit A2)
Messrs. G. S. Murigappa & G. Rajagopala-
chari have been retained. Hence
invalid for reason stated in (8)

10) Voting paper No. 62 Exhibit A3
There is no deposit to marking. 3
Names have been marked —
between Names & Symbols. Even
granting that three Names have been
scored out by the Voter, 2 Names both
Mr. G. S. Murigappa & G. Rajagopalachari
have been retained. Hence this
vote is invalid.

11) Voting paper No. 69 Exhibit A4
The Names of Messrs. G. S. Murigappa
& G. Rajagopalachari have been
retained. Hence this vote is invalid.

35 It will thus be seen that Votes in
Voting papers Nos. 34, 122, 155,
112, 44 & 308 may be considered to
be in favor of Mr. G. Rajagopalachari
& Votes in Voting papers Nos. 157, 58, 61,
62 & 69 are invalid.

36 Mr. G. Rajagopalachari thus gains 6
Votes. As a result of the Counting
It is submitted, that, Mr. Rajagopalachari
has already secured 126 Votes in the
General election & if these 6 Votes now
resulting in his favour are also added

NOTE—Contn. sheet

WD 0324—GPB—60,000—24-5-27

App. F. III—2]

General and Revenue Secretariat.

File No. 89 of 1926.

Serial No.

Le mill have secured 132 Volts
in all.

8
21/10

NOTE—Contn. sheet

WD 0324—GPB—60,000—24-5-27

35 This is an application for a review of the order passed by Government in appeal by Mr. Rajagopalachar, Advocate against the order of the Deputy Commissioner, Tumkur, declaring Mr. G.S.Murigappa, Pleader, Gubbi as a member of the Representative Assembly from the Gubbi urban area.

36 The first question for consideration is whether an application for review lies in such cases. Rules relating to hearing of appeals provides only an appeal to Government against the decision of the Deputy Commissioner and the order of Government will be final (Vide Page 89 Vol.I of the Manual). No provision is made in the rules for a review. Even in the Land Revenue Regulation no provision is made for a review of an order passed by the Government (Vide Chapter 30 Section 280) but in practice the review applications seem to be admitted in cases of orders passed by Government in revenue appeals. The principle of the law is that every court has inherent power over its own records so long as those records are in its power and it can set right any mistake in them. (See Ameerali and Woodroff on Code of Civil Procedure Page 833).

37 It seems to me therefore that the Government have inherent power to admit ~~in~~ a review application with a view to set right any mistake in the records. This inherent power is not restricted by the statute by any law or rule having the force of law in respect of election cases. I shall therefore now examine the order passed in the light of the ground urged in the application for review.

38 The main contention of the petitioner is

116

that 7 votes which were declared invalid are not invalid on the ground that the voters have clearly indicated their intention to vote for the petitioner though they have not strictly followed the instructions contained on the back of the voting paper and that the Deputy Commissioner erred in following the express letter of the rules and not the spirit, in other words that in all these cases the intention of the voter in recording his vote has to be ascertained and give effect to such intention.

39 The law in England is as follows:--

"We have first of all, asked ourselves whether the voter received his paper with the intention to vote. The mere fact that he has applied for and received a voting paper, affords abundant evidence that such was his intention. Then we have looked at the face of the paper itself, with a view to see whether or not the voter has by any mark clearly indicated the person for whom he wished and intended to vote; and if we have found such a mark, we have upheld the vote, regardless of the very technical and as we think unsubstantial, objections which have been allowed in some of the earlier cases to be found in the reports of election cases, our view being that we ought to interpret the Ballot Act liberally and subject to other objections, to give effect to any mark on the face of the paper, which in our opinion clearly indicated the intention of the voter, whether such mark were in the shape of a cross, or a straight line, or in any other form and whether made with pen and ink, pencil or even an indentation made on the paper and whether on the right or the left hand of the candidate's name or elsewhere within his compartment on the voting paper."

(17

"A ballot paper may be well marked, although the mark does not discolour the paper or appear to have been made with a pencil, if from any circumstances the Court can infer that the marks were intentionally made (Per Hawkins J. Lawson v Chester Master (1893) 9 T.L.R. 255, Day 155, 4 O'M & H. 194 Also Berwick case McLaren v Home (1880) 44 L.T. 289, 290, 3 O'M & H. 178, 180; See The English & Empire Digest vol XX, pp 110 & 113.)

Lv The same has to be applied, I think, to the interpretation of our rules, for, the intention of the legislature in framing these rules is to ascertain the intention of the voter. The votes were scrutinized by the Assistant Secretary and he noted his observations at pages 5 and 6 of the Notes. Before examing the votes it is necessary to note that the Government have issued instructions to all the Deputy Commissioners on 16th March 1927 on a reference from Mr. B.T.Kesava Iyengar, the Deputy Commissioner of Shimoga. These instructions are to the effect that the scoring out of names or symbols or both in the voting paper is sufficient to constitute a valid vote. (Vide Flag T.) These instructions were conveyed with a view to remove a doubt whether the scoring out of the symbols only without scoring out the names would invalidate the vote. That officer expressed an opinion that such votes should not be invalidated in as much as the intention of the voter is clearly expressed by the retention of the symbol for which he votes. Otherwise the very object for which the symbols have been introduced would be frustrated. This view was accepted by Government and the circular in question was issued. It is

(R.A 34-26-34)

thus clear that the intention of government in giving instructions is to ascertain the intention of the voter in all cases of doubt. Before scrutinising the votes it has to be noted that the first two candidates mentioned in the voting papers have withdrawn their candidature before the election thus leaving 3 candidates Nos.3, 4 and 5 who stood for election. In Exhibit 2 we find the symbols against the names of Messrs G.S.Murigappa and G.Murigappa have been torn off, leaving both the name of Mr. Rajagopalachar and the symbol against his name in tact. The act of taring out the symbols and retaining the symbol of Mr. Rajagopalachar shows clearly the intention of the voter to vote for Mr. Rajagopalachar. Hence that vote seems to be valid in accordance with the circular issued.

41 Exhibit 3. The voter has clearly written ರಾ ಸಿ ಸ್ವ ಂ ಅ ಕ್ಷರ in the compartment belonging to Mr. Rajagopalachar. Hence, it is clear that he intends to vote for Mr. Rajagopalachar. This also must be taken to be a valid vote in favour of Mr. Rajagopalachar.

42 Exhibit 4 B. A cross mark has been placed against the name of Mr. Rajagopalachar, thus showing his intention to vote for him.

43 Exhibit 4 A. A cross mark is placed against Mr. Rajagopalachar. Hence his intention is clear to vote for him.

44 Exhibit 5. This vote is invalid; for, he has retained the names of two candidates namely, Messrs. G.S. Murigappa and G. Rajagopalachar.

No. Rev. 58 1/19

45 Exhibit 6. All the names have been scored out except that of Mr. Rajagopalachar. whose name has not been scored out in Kanarese nor fully the English name of Mr. Rajagopalachar. This vote may be considered as valid.

46 Exhibit 7. In this the first name and that of Mr. Rajagopalachar has been retained. The first name namely that of Gangappa has not to be ~~reckoned~~ counted since he has withdrawn. It is therefore a valid vote in favour of Mr. Rajagopalachar.

47 Exhibit A. In this both names have been retained. Hence it is an invalid vote.

The same is the case with A.2.

48 Exhibit A.3. Two names have been retained. Hence this vote is invalid.

49 Exhibit A.4. Two names have been retained. Hence this vote is invalid.

50. It will be therefore clear that votes in voting papers marked Exs. 2, 3, 4(b) (No.155) Ex.4(a), Ex. 6, Ex.7 should therefore be taken as valid regardless of the very technical and I think, unsubstantial objections, ~~must be held to be valid~~ in accordance with the principles laid down in English cases quoted above. If these six votes were counted in favour of Mr. Rajagopalachar he will get 132 against 130 recorded in favour of Mr. Murigappa. He may therefore be declared duly elected.

51 Submitted with regret the aff[illegible] by Dewan

will keep himself ready to give up in person in his room

27 OCT. 1927 3647

28 OCT 1927 3706

3rd Member

Dewan

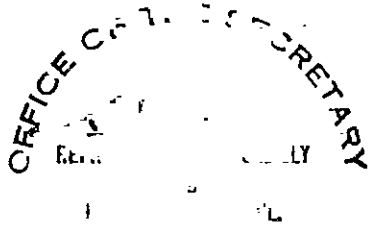
Please submit the madras case quoted by the D.C in para 2 of his order.

This case was decided by a Single Judge (Mr Justice Sundara Aiyar). It is reported in 90 Ind Cases 1055 which is put up.

3rd Member

Ordered by the Secretary that this may lie over till the necessary notifications amending Rules regarding hearing Appeals by Govt, are issued.

BVN
31-10-27.



General and Revenue Secretariat. R-A. File No. 89 of 1926.

Serial No.

Had a discussion with 3rd member who asked this to be looked for hearing.

I issue notice to parties & post it for hearing.

8-9
31.10.27

NOTE—Contn. sheet

WD 0321—GPB—60,000—21-5-27

EXTRACTS FROM THE NOTES IN THE FILE RE. PROCEDURE TO BE ADOPTED IN HEARING APPEAL PETITIONS ABOUT ELECTIONS TO THE LEGISLATIVE ASSEMBLY.

(R.A 32-27-1)

... ...

(45) The pending cases may perhaps be heard and disposed of by two of the Members of Council like Coun cases as ordered pending the decision of the genera question raised by the Dewan.

(In) H.M., 9-1-23

DEWAN.

(46) may be talked over informally in Council.

(In) M.I., 10-1-23

... ...

The matter may be referred to the Rules Commit The opinion of the Chief Court may be obtained on t proposal to entrust Dist. Judges with the disposal disputes in L.A. elections.

(In) M.M., 6-2-23

... ...

Please note what action has been taken on pendi cases (mentioned in list flagged A).

(In) H.J., 17-2-23

Suggest further action could be taken on the pendin cases referred to in view of the orders contained in paragraphs 45 and 46 above.

(In) S.M.J. 17-2-23.

This question will be brought up for by the Rules Committee in due course.

(In) M.J

Chairman, Rules Committee.

S.C.'s Orders are under appeal to existing rules. These appeals are to be now.

(In) H.

First Member.)

... ...

Where are now the files rel pending cases?

(In)

They are on the Bus. shelf

(In) S.M.J., 13-2.

Orders should be taken abo on the respective file.

(In)

56. 58/Rec (22

App. F. III—2]

General and Revenue Secretariat. R.A. File No. 89 of 192 6.

Serial No.

Submd. for orrs.

8/3

18/2

Mr. G. Rajagopalachari
Vs
Mr. G. Murigappa
-Guddi Urban Area

Submitted for orders if the case may be posted for hearing & if so, to what date. Orders are also requested as to whether parties may be heard thro' their Counsel.

27/3 27/3 Secy) 29/3

3rd Mem^r. 30/3

(60) Post to 14th or thereabouts.

CSJ
7/4
8/4.

OFFICE OF THE THIRD MEMBER OF COUNCIL
30 MAR. 1928
No. 9536

DEWAN'S OFFICE.
Received on
9 APR. 1928
Reg. No. 6357

(1) Either the 1st or 2nd Mr may kindly be asked to sit with the 3rd Mem^r to hear the Review applications in the files against the order of Govt passed in appeal.

Dewan.
7-4

8353/16/4

Mr 1st Member Mr II 1st.

10-4-28

Rep by Mr Sheshagiri Iyengar
Opponent absent.
Heard Mr B.
Order reserved.

1st Mem^r
Seen by the member
11/4.

8/4
10/4

CSJ
7/5.

8/4
12/4

Post the Cases.

WD 0321—GPB—50,000—21-5-27

General and Revenue Secretariat. File No. 89 of 192 6

Serial No.

Order

please submit for signature.
CSG
15/9

(5) We have heard the advocate for the petitioner. His main argument is that the rules regarding the marking in the voting papers should not be interpreted very strictly as mandatory but that they should be treated as merely illustrative & that voters should be given the liberty of adopting any method they choose of recording their preference for the candidate so long as their intention can be clearly gathered. This view is no doubt supported by certain judicial decisions in England & in ~~Ind~~ British India, though other views have also been held in some cases. We have no information as to the exact wording of the rules on which these decisions are based, but the rules in ~~impose~~ are certainly mandatory in their form. Even granting ~~the~~ for purposes of argument the contention on behalf of the petitioner we are unable to agree with him that the various markings on the voting papers in question disclose an

NOTE—Contn. sheet

WD 0321—GPB—60,000—24-5-27

(214)

General and Revenue Secretariat. File No. 89 of 1926

Serial No.

intention - free from doubt - on the part of the voters concerned to vote for the petitioner. In the result we see no reason to reconsider the decision of Govt already against the petr in Rajapalayam election. The review is dismissed.

9576/16/5

5/5/28 As Sale suggests

Mr Chaudhary

Submitted to Hon'ble Member for kind signature

8/1 15.5.

Draft submitted

19/5 8/1 19/5

Secy) Draft may be approved

3rd Member 8/1 21.5

Hon'ble Member in Council
21 MAY 1928
Revenue Dept.

CSS 24/5 8/1 25/5.

Issued 25/5

P.T.O.

NOTE—Contn. sheet

WD 0324—GPB—60,000—24-5-27

General and Revenue Secretariat.

R.A File No. 89 of 1926-7

Serial No. 9

To the D.C. Dharwar with a copy
" Mr. S. Rajagopalachar Advocate, Dharwar
" " G.S. Murigappa Pleader, Hubli
G.O. no Rel 825-7 & 26.5.28.

Dismisses the revised petition ref. 6 on file
since Govt. are of opinion that the rules re
marking on voting papers are mandatory as against
the contention of the petitioner that they are illustra-
tive and that even granting the contention of the petr.
the marking on the voting papers
do not disclose an intention free from doubt
on the part of the voters

B

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

Sarasvati case.

Quoted Sabbatini
In Empire

Privy Council
Digest
P. 109, 110

Mr. K. J. Khashgam
Contended that the courts
Judges have held that
the rules should be interpreted
liberally. We have to
interpret the ballot Act
very liberally.
Instructions to voters
Intended to
Instruct in plain
manner to enable
May not note his vote
The Legislature wanted that
the Court
the voter.
The Englishmen are in the
habit of leaving loopholes
in Statutes

A.I.R. 1920, Madras P. 614
Justice Sivaswamy Iyer
Infringement of
Copyright
Mainly because instructions
are not closely followed
it does not nullify the
vote.

D. Cruz
vs
E. C. Joseph

Inst. pln No. 435

OFFICE OF THE SECRETARY

25 JUN 1927

COURT FEE TWO RUPEES

Presented by Mr K.T. Bhashyam on behalf of appellant

Law Secretary

Complimentary

20/6/27

RA 89-26-1

PRIVATE SECRETARY TO THE DEWAN OF M

BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE, BANGALORE.

Election Appeal No. of 1926-27.

Appellant:		Respondent:
G. Rajagopalachar, Advocate, Tumkur.	VS	Mr. G.S.Murigappa, Pleader, Gubbi.

R.A. Section

23.6.27

UNDER RULE 6(a) of No.P.2400/Legis.12-23-7 dated 7-11-23.

The appellant abovenamed begs to appeal from the decision of the Deputy Commissioner of Tumkur in Election Case No. 1212/26-27 and sets forth the following grounds of objection, namely:-

1. That the learned Deputy Commissioner erred in holding that the votes in favour of the appellant Exs:2, 3, 4(a) 4(b), 6, and 7 were not valid and in rejecting the same.

2. That the learned Deputy Commissioner further erred in holding that the intimidation by the opponent and his agent was not proved; and the reasons given by the Deputy Commissioner for disbelieving the appellant's witnesses are neither sound nor tenable.

3. That the unimpeached evidence of appellant's witnesses PW 5:Hanume Gowda and PW 6: Sidde Gowda has been entirely overlooked and the decision is vitiated by reason thereof.

4. That the evidence of DW2:Badramma and DW3:Mallamma who are the creatures of the opponent and whose statements are conflicting and contradictory should not have been relied upon and the learned Deputy Commissioner erred in basing his decision thereon.

5. That the material facts of the case such as the immediate complaint to the Amildar who was the Polling Officer, the admission of opponent in the presence of PW6:Sidde Gowda regarding intimidation and the like have been erroneously ignored.

(2

6. That the learned Deputy Commissioner erred in drawing an adverse inference from the omission to examine on the appellant's side the cartmen and those intimidated since they were all under the influence and obligation of Opponent.

7. That the decision of the Deputy Commissioner is erroneous in law and unsustainable.

8. That the decision of the learned Deputy Commissioner is opposed to the facts of the case, the evidence on record, and the law thereon.

The appellant, therefore, prays that the decision of the lower court may be set aside with costs of appellant ✗ throughout, and that appellant be declared duly elected.

Mysore,
20-6-27

M.T. Narayana Aiyangar
ADVOCATE FOR APPELLANT.

G. Basavanna
APPELLANT.

IN THE COURT OF THE DEPUTY COMMISSIONER, TUMKUR

DISTRICT.

Election Case Petition No. 1212/26-27

Present:--.

K. V. Anantaraman, Esquire, B.A.,
Deputy Commissioner,
Tumkur District.

Petitioner:-- Mr. G. S. Raja Gopala Char,

Vs

~~Counter Petitioner~~:-- Mr. G. S. Murigappa, Gubbi.

Subject:-- Objection petition filed by the petitioner contesting the Election of the ~~Counter-petitioner~~ to the Representative Assembly from the Gubbi urban area on the following grounds:--

(a) The petitioner has secured a larger number of valid votes than the opponent. The Returning Officer illegally rejected as invalid some of them and consequently the case of the petitioner has been materially prejudiced.

(b) The Polling Officer illegally prevented from voting several persons who had come to vote for the petitioner although they were identified to be the persons whose names are printed in the Electoral Roll.

(c) With the intention of inducing voters to give their support to him at the Poll the opponent by himself and through his agents hired and brought in carts several voters and himself paid the hire amount.

(d) The opponent by himself and through his agents brought undue influence to bear on and also held out threats to several voters as a result of which the petitioner lost a number of votes.

2. The following witnesses were examined on behalf of the petitioner.

1. Mr. Raja Gopala Char.

2. Mr. K. Subba Rao, Amildar, Gubbi.

3. " Ganganna Gowda, Torehalli.

4. " Nanjappa, Gubbi.

5. " Hanume Gowda, Gubbi.

6. " Sidde Gowda, Dandinasivara.

3. The following exhibits were filed for the petitioner.

Exhibit.	1	Instructions to voters.	
"	2	Voting paper No.	341
"	3	- do -	122
"	4(a)	- do -	112
"	4(b)	- do -	155
"	5	- do -	157
"	6	- do -	308
"	7	- do -	44

4. The following witnesses were examined on behalf of the counter-petitioner.

1. Mr. Murigappa.
2. " Bhadramma.
3. Hallamma.
4. Honnegowda.
5. Gangappa.

5. The following exhibits were filed for the counter-petitioner.

Exhibit	a1	Voting paper	58
"	a2	" "	61
"	a3	" "	62
"	a4	" "	69
"	a5	List of candidates who stood for election.	

Mr. K. T. Bhashyam, Advocate for the petitioner.

Mr. G. Paramasivayya, Advocate for the opponent.

1. The grounds on which the petitioner bases his request to declare the election of the opponent as invalid are four in number.

1) The scrutiny of votes was not correctly done, certain votes which should have been counted for the petitioner having been declared invalid for inadequate reasons.

2) The opponent threatened certain Tigalars that if they voted for the petitioner, he would bring them to trouble.

3) The opponent provided hired conveyances to certain women voters.

4) Certain voters who were entitled to vote were not allowed to vote on the ground that their description as given in the list of voters was defective.

2. As regards the first ground, the petitioner contends that voting papers exhibits 2, 3, 4a, 4b, 6 and 7 should not have been disallowed merely because they were not marked in the manner required by the orders of Government. Mr. Bhashyam has referred to in the English case, Woodward Vs Sarson in which it was held that ballot papers marked in a manner different to that officially prescribed were valid and admissible, provided the indication of the voters preference was clear and un-mistakable. This decision is however, not of much value to us as the rules in force here relating to elections are not identical with those in force in England for Parliamentary elections. In para 6 of the G.O. No.P. 3918-Legis. 12-23-20 dated 15th January 1924

it has been laid down that any ballot paper which is not duly marked shall be invalid. As regards the votes referred to by the petitioner, they have not been duly marked. As the rules stand, the scrutinising officer was quite correct in declaring them invalid. He was bound to do so, the rule being perumptory - not having leaving him any discretion in the matter. It has been held in Venkataramiah Vs Subba Reddi (Madras) that " these (election) rules are not merely directory but mandatory and a violation of these rules nullifies the vote and such a vote should be declared invalid". I therefore uphold the declaration of the scrutinising Officer that exhibits 2, 3, 4a, 4b, 6 and 7 were invalid.

3. Coming now to the alleged charge of intimidation of voters, the specific imputation is that the opponent and Mr. Honne Gowda, Vice President of the Gubbi Municipality told certain Tigalar/ voters that if they (the voters) voted for the petitioner they would be brought to trouble. The petitioner has no direct personal knowledge of any threats given out to the voters by the opponent. He heard of it for the first time on the 11th March when he went round canvassing for votes. Two witnesses have been examined by the petitioner to prove this point, Ganganna Gowda, who is a client of the petitioner and Nanjap who belongs to the party opposed to that of the opponent over the question of animal sacrifices at the local Kari Jatra, which is a point of acute difference of opinion in Gubbi. The opponent and Mr. Honne Gowda deny the allegation of intimidation. The evidence adduced by the petitioner is vague, and inadequate to establish the allegations made. The petitioner does not know the names

names of those intimidated, but he states that he can identify them. None of those persons has been cited as a witness by the petitioner. The petitioner counsel argued that the intimidation continued in full force and that those persons were not cited because they were not likely to come out with the truth. I cannot accept the explanations offered. It has not been proved that the opponent Mr. Honne Gowda are capable of, or are likely to cause any serious trouble to the persons in question. The petitioner has failed to produce or even cite the witnesses cognizant of the actual facts according to him. The testimony of witnesses Gangappa and Nanjappa has, for reasons already stated, to be taken with caution. The former says that he is not sure if the persons who spoke of the intimidation are voters! I hold therefore that the petitioner has failed to prove that the opponent intimidated any voters.

4. Turning next to the allegation of providing hired conveyances to voters, the evidence available is that of witnesses Gangappa and Nanjappa. Bhadramma and Mallamma who are the voters alleged to have been taken by the petitioner in hired carts state that they went on foot to the voting place. The cart-men have not been cited for examination by the petitioner and no explanation is forthcoming for this obvious omission. The evidence of witnesses Gangappa and Nanjappa is vague on this point. They did not see the opponent engaging these carts or paying for them. Moreover their evidence is not entitled to much weight for reasons stated in the preceding paragraph. The allegation of providing hired conveyances has not been proved.

5. The last point is the exclusion of certain voters The voters' list is final and conclusive as regards the persons who are entitled to vote. The voters mentioned by by the petitioner have not been permitted to vote because they did not answer to the description given in the voters list. It is not open to the Polling Officer to make enquiries about errors in the voters list or make corrections. The action of the Polling Officer is quite proper.

6. As the grounds relied upon by the petitioner are not maintainable, I dismiss his petition. The petitioner will pay the cost of the opponent. The opponent should file the statement of his costs.

Dated 9-6-27

Sd/- K. V. Anantaraman,
Deputy Commissioner,
Tumkur District.

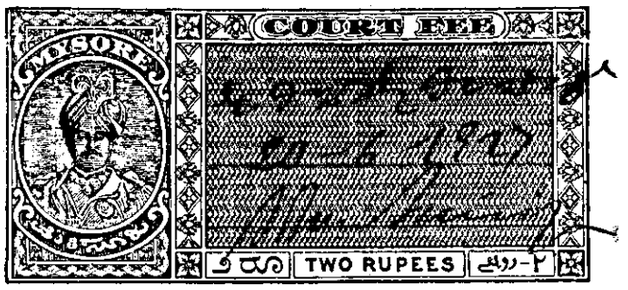
TUMKUR DISTRICT. OFFICE OF THE DEPUTY COMMISSIONER. 14 JUNE 1927. No.

" C O P Y "

A. Venkatalingaiya
Assistant Shanbhogue

Deputy Commissioner,
Tumkur District.

No. of words 1080.
Copying fees 1-6-0
Comparing fees 0-3-6 1-9-6
Date of application for grant of copy. 9.6.1927
Date on which copy was ready. 14.6.1927
Date on which copy was delivered 14.6.27.



9

IN THE COURT OF THE

OF TUMKUR.

BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

1926 –1927 ನೇ ಇಸವಿ Eln ಅನಂಬರು.

ವಾದಿ VS ಪ್ರತಿವಾದಿ

Rajagopalachar Mr. G.S.Murigappa

Mr. K. T. BHASHYAM AIYANGAR, B.A., B.L., ADVOCATE,
ಮುಂಜುರವಜಗೋಪಾಲಚಾರಿಯವರಿಗೆ

G.Rajagopalachar ಬರಿಸಿಕೊಟ್ಟ ವಕಾಲತ್‌ನಾಮೆ.

ಈ ಮೊಕದ್ದಮೆಯಲ್ಲಿ ನನ್ನ ಪರವಾಗಿ ಕೋರ್ಟಿಗೆ ಹಾಜರಾಗಿ ಅರ್ಜಿವಗ್ಯೆರೆ ಕೊಟ್ಟು ವಿವಾದಿಸಿ ಪೈಸಲ್ ಹೊಂದತಕ್ಕ ಬಗ್ಯೂ, ನನಿಗೆ ಸಲ್ಲತಕ್ಕ ಡಿಕ್ರಿ ಮೊಬಲಗಿಗೆ ಜಾರಿಕ್ರಮ ನಡಿಸತಕ್ಕ ಬಗ್ಯೂ ದಸ್ತ್ಯೆವಜು ವಗ್ಯೆರೆ ತೆಗೆದು ಕೊಂಡು ರಸೀತಿ ಕೊಡುವುದಕ್ಕೂ ಕೋರ್ಟಿನಿಂದ ವಾಪಸು ಆಗತಕ್ಕ ದಾವಾಸ್ಟ್ಯಾಂಪು, ಪ್ರೊಸೆಸ್ ಸ್ಟ್ಯಾಂಪು, ಸಾಕ್ಷಿಭತ್ಯ ಮತ್ತು ಡಿಕ್ರಿ ಮೊಬಲಗು ವಗ್ಯೆರೆ ಇತರವಿಧವಾದ ಎಲ್ಲಾ ಮೊಬಲಗುಗಳನ್ನು ತೆಗೆದುಕೊಳ್ಳುವುದಕ್ಕೂ, ಸಹ ತಮಗೆ ಇವರಿಂದ ಅಧಿಕಾರ ಕೊಟ್ಟಿಧೇನೆ. ಆದ್ದರಿಂದ ತಾವಾಗಲೀ ಅಥವ ತಮಗೋಸ್ಕರ ಮತ್ಯಾನಲಾಯರಾಗಲಿ ಕೋರ್ಟಿಗೆ ಹಾಜರಾಗಿ ನಡಿಸುವ ಎಲ್ಲಾ ಕೆಲಸಗಳನ್ನು ನಾನು ಖುದ್ದು ಇದ್ದು ನಡಿಸಿದಂತೆ ಒಪ್ಪಲು ಇವರಿಂದ ಬದ್ಧನಾಗಿರುತ್ತೇನೆ.

ರುಜು. G. Rajagopalachar

ಈ ಮೊಕ್ತ್ಯಾರುನಾಮೆ ಕೊಟ್ಟವರು ನನಗೆ ಪರಿಚಯ ಸ್ಥರು. ನನ್ನ ಸಮಕ್ಷಮ ಇದಕ್ಕೆ ರುಜು ಮಾಡಿದ್ದಾರೆ.

ಅಂಗೀಕರಿಸಿ ಇರುತ್ತೇನೆ.

K. T. Bhashyam Aiyangar

ADVOCATE.

ತಾರೀಖು

ಶ್ರೀ ಪಾಂಡುರಂಗ ಪ್ರಿಂಟಿಂಗ್ ಪ್ರೆಸ್, ಕುಮಕೂರು

D. C. 9] A 28-27-28

Encs. one file (R. Pet 1212) 26-7 & other Enclosures.

(11)

OFFICE OF THE DEPUTY COMMISSIONER,
TUMKUR DISTRICT.

Dated Tumkur, 8th July *1927.*

R.A 89-26-3

FROM

K. V. ANANTARAMAN, ESQ., B.A.,
Deputy Commissioner, Tumkur District,
Tumkur.

OFFICE OF THE SECRETARY
11 JUL 1927
REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

TO

B. Nagappa, Esquire, Bar-at-Law,
Secretary to the Government of His Highness the Maharaja of Mysore,
Law.
Department,
Bangalore.

Recd 12/7 1/20 Pm

SIR,

With reference to your No. 5627/ R.A. dated 30th June 1927, forwarding for early report with records petition from Mr. C. Rajagopalachar, Advocate, Tumkur appealing against my order in election case No. 1212/ 26-27 on the file of this court, I have the honor to submit herewith the entire records connected with the case.

The enclosures received on the 6th July 1927 are also sent herewith.

I have the honor to be,

sir,

Your most obedient servant.

Deputy Commissioner,
Tumkur District

AD.8/7

APP. F. VI. Gl.]

SUBJECT..... 10

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 192

Date of issue 30/6/27

Signed by..... Mr. T. S

List of enclosures.....

Co by.....

Examined by.....

Section RA

File No. 89-26

Seria No. 2

No. 5627 / R-A.

To The Deputy Commissioner

Jaffna

Sir,

I am directed to forward for favour of an early despatch with regard petition Regd No. 1024 dt 20.6.27 from W. J. Rajagopalachar, Advocate, Jaffna appealing against the order in election Case No. 1212/26-27 on the file of Court of the Deputy Court Jaffna dt.

I have the

for Secretary to Govt

over Law department

WD 0562—GPB—31,000—17-8-25

25.6.27.

MEMO OF INTERVIEW WITH THE DEWAN.

12

Dated.....192

Notes.

[etc., not intended for permanent record.]

Name of Interviewer—

Int. plu. No. 200

Representation in brief—

[illegible]

Submitted.

This election appeal has been noted upon by Board Secretary & the Secretary & has been submitted to 3rd Member & Dewan on 17/9/27

19/9 This may be kept in the connected file.

19.9.27.

Mr. S.N.A.

Please put up by day

17-9-27

17/9

17/9

19 SEP 1927

OFFICE OF THE SECRETARY TO THE LEGISLATIVE COUNCIL AND REPRESENTATIVE ASSEMBLY

19/9/27

APP. F. VI. Cl.]

SUBJECT.....

Diary No. of letter replied to.....

General and Revenue Secretariat
(RH)
the 192

Date of issue.....

Signed by.....

List of enclosures.....

Copied by.....

Examined by.....

Section RH
File No. 89-26
Serial No 4
No. RH. 210/R.A.

To
Mr. G. Rajagopalachar M.A.L.
Advocate
Tuticorin

In reply to his petition
dated 20 June 1927 appealing
against the order of the
Deputy Commissioner Tuticorin
Dt declaring Mr. G. S.
Murigappa Pleader, Gubbi
to be a member of the
Rep: Assembly from the
Gubbi Urban area and
requesting that the order
may be set aside and he
be declared elected. Mr.

over

G. Rajagopalachar,
Advocate, Tumkur is informed
that Government, on a perusal
of the records connected with
the election, and enquiry
leading to the Deputy Com-
missioner's order, and on a
careful consideration of all
the facts of the case, are
of opinion that the Deputy
Commissioner was right
in rejecting his ~~appeal~~ objection petition
and declaring Mr. G. S.
Murigappa, Pleader Gubbi
as duly elected
The appeal is therefore dismissed.

By order

30/9 Secretary to Govt
Law Department.

No. R Elc. 211 A.A.
Encl. one sketch file
Dt. 30/9/27

Copy of the above is forwarded
to the Deputy Commissioner
Tumkur Dt. for information
with reference to correspondence
ending with his letter No. A2 2 e/27-28
Dt. 8.7.27 & the file records received therewith
are returned.

By order

30/9
Dr. 29.9.27. for Secretary to Govt
Law Department

MEMO OF INTERVIEW WITH THE DEWAN.

12

Dated.....192 .

Name of Interviewer—

Int. plu. No. 200

Representation in brief—

Notes.

[etc., not intended for permanent record.]

Submitted.

This election appeal has been noted upon by the Home Secretary & the Secretary & has been submitted to the 3rd Member & Dewan Sahib

17/9/27

19/9

This may be kept in the connected file.

19.9.27.

Hon. S. M. A.

Please put up

19/9

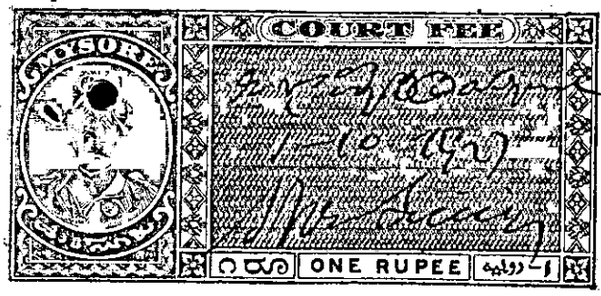
17-9-27

OFFICE OF THE SECRETARY TO THE LEGISLATIVE ASSEMBLY

19 SEP 1927

REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

19/9/27



D.S.S/Rev
R.A 89-26-5.

BEFORE THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

Election Revision Petition No. 27-28.

Petitioner.		Opponent.
G.Rajagopalachar, M.A., LL.B., Advocate, Tumkur.	Vs.	G.S.Murigappa, Pleader, Gubbi.

Prosecuted by Sri K.T. Bhashyam Iyengar
3/10/27

Under Section 218 of the Mysore Land Revenue Code read with Rules 6 and 7 of the Government Notification dated 7-11-23.

The Petitioner above-named most humbly and respectfully begs to state as follows:-

I. That he and the opponent contested the Gubbi Urban constituency seat for the Representative Assembly at the Election held on the 12th March 1927. The Opponent got 130 votes the petitioner 126 and 7 votes were declared invalid. These seven votes were in favour of the petitioner and were wrongly held invalid. If they had been taken into calculation as they ought to have been the petitioner would have secured 133 votes i.e. 3 more than the opponent. As it was however the Polling Officer rejected the 7 votes and declared opponent the successful candidate.

2. That petitioner thereupon appealed to the Deputy Commissioner, Tumkur who on the basis of a Madras decision by a single judge refused to consider the case-law on the subject and rejected the appeal.

3. That according to the Deputy Commissioner

the rejected votes are in favour of the petitioner but cannot be counted since they are against the express letter of the Rules and instructions to the voters to mark their vote in a particular manner.

4. That the Deputy Commissioner's decision is erroneous and highly inequitable in as much as (a) the instructions to voters are strictly not "law" binding upon the voters but only suggestions to indicate their intention in some manner, (b) The strict interpretation of the law on the point adopted by the Deputy Commissioner is inappropriate in a country where literacy is low, the system of election new, the methods of voting diverse and conflicting. (c) Even in the Western Countries where the elections have been held for over a century the methods uniform and well-known and literacy considerably higher than here, the Courts have held that the intention of the voter is more important than the manner in which he has indicated it whether in accordance with or in violation of the rule suggesting the mode. (d) That the point of law has been held by our own Courts in favour of the petitioner's contention and against the view adopted by the Deputy Commissioner.

5. That the petitioner appealed to the Government against the decision of the Deputy Commissioner and was expecting to be heard in support of his appeal but he learns now that the Government have rejected the appeal.

6. That the petitioner most humbly submits that the decision of the Government is highly unjust and inequitable and prays that the same

17

may be revised on the following:-

GROUNDS OF REVISION.

(A) That the point of law involved is a technical one involving discussion of a highly technical branch of law and the decision thereon should have been based on arguments heard in support of petitioner's contention.

(B) That the decision of the Deputy Commissioner is utterly erroneous for the reasons set forth in para 4 above and the same does not appear to have been considered by the Government.

(C) That the Civil Courts decision holding the votes valid should have been followed and the votes in question counted in favour of the petitioner.

(D) That Government should have heard petitioner in support of his appeal in which case he would have shown to the satisfaction of the Government that the Deputy Commissioner's order was erroneous in law and the petitioner should have been declared successful.

(E) That in any case the petitioner was entitled to be declared successful and submits that the law on the point is clearly in his favour (See decision of Woodward Vs Sarsons and the decision of the District Judge,Bangalore in election petitions Nos.1 and 2 of 27-28).

(F) That the decision of the Government rejecting the appeal is otherwise erroneous and unsustainable in law.

The petitioner therefore most humbly

and respectfully prays that the order of Government rejecting the petitioner's appeal may be revised and set aside and that petitioner may be heard and declared the successful candidate to the Assembly from the Gubbi Urban Consitituency. He further prays that in-as-much-as the ensuing Session begins on the 7th instant he may be heard and orders passed before that date.

M y s o r e.
3-10-27.

G. Srinivasamurthy
petitioner

K.T. Bhashyam Aiyangar
Advocate for the Petitioner.

OFFICE OF THE SECRETARY
D.56/RE
4 OCT 1927
REPRESENTATIVE ASSEMBLY
AND
LEGISLATIVE COUNCIL

(19)

RA 29-26-1

3 OCT. 1927

[illegible] Dewan of Mysore,

[illegible].

Sir,

Mr. [illegible]Shivaram tells me that you have decided my election appeal and expressed your sympathy for me. I am grateful to you and at the same time feel constrained to express my great disappointment at it. It was least expected that the case would be decided "in camera". Much injustice has been thereby done to me and to my Constituency; because although the majority have elected me, I have been kept out of the Assembly. The Lower Court misinterpreted the law and failed to properly appreciate the evidence adduced for me, and the Appellate Court has simply confirmed that ---- decision. I feel that my case has not been properly represented to you at least so far as the <u>legal</u> side of it is concerned; but for which, I am sure you would have decided in my favour. Further, both the Lower and the Appellate -- Courts disposed of the case very late so that I could not go to a Civil Court for relief, before both the last as well this session of the Representative Assembly. A case -- similar to mine was thought fit to require their decision of their Lordships of the Privy Council and they have given the correct interpretation of the law applicable in my case. The Deputy Commissioner has simply ignored it and has come to an erroneous and harmful conclusion. I have therefore -- to request you to review your order and dispose it of after giving me an opportunity to explain my case. As the Dasara session of the Assembly is fast approaching I have further to request that in the alternative my case may be decided by adding in my favour the votes disallowed. I have filed a review Petition along with the authorities in the Office of the Secretary to the Representative Assembly and the Legis-

(20

Legislative Council and humbly request you to be good enough to have my case decided before the 7th instant after hearing me on the point of law.

Thanking you,

I beg to remain,

Sir,

Your most obedient servant,

Mysore.
3rd Oct. '27.

G. [illegible]

Advocate

Camp. Woodlands Hotel, Mysore.

APP. F. VI. Gl.]

SUBJECT..... (21

Diary No. of letter replied to.....

General and Revenue Secretariat
( )
the 192

Date of issue 7/10/27

Signed by Mr. N. Devaraj

(Election case No. 1212/26-27 on your file.)

S-C P 7/10/27

List of enclosures.....

Copied by.....

Examined by.....

Section R.A.

File No. 89-26

Seria No. 7

No. 14791 R&L

To The Deputy Commissioner
Tumkur
Maharaja's College
Mysore

Sir,

I am directed to invite your attention to this office Memo No. Rel 211 dt 30.9.27 returning the records relating to the appeal petition of Mr. G. Rajagopalachar M.A. L.L.B. Advocate, Tumkur, and to say regarding election to Rep: Assembly from the Gubbi Urban Constituency & to request that the entire file of records may be sent to above. May be sent to this office immediately.

over

WD 0562—GPB—31,000—17-8-25

6/10 For Secy.

D. C. 61

OFFICE OF THE DEPUTY COMMISSIONER,
TUMKUR DISTRICT.

Dated Tumkur, 7th October 1927.

FROM

K. V. ANANTARAMAN, ESQ., B.A.,
Deputy Commissioner, Tumkur District,
Tumkur.

To

B. Nagappa, Esquire, Bar-at-Law,
~~Chief~~ Secretary to the Government of Mysore,
Bangalore.
Law Department,
Camp. M Y S O R E.

SIR,

I have the honor to submit herewith, the file of records received with your office No.R. El. 211/ R.A. dated 30-9-1927 relating to the election of a - R.A. Member to the Gubbi Urban area, as per telegram dated 7-10-1927 from the Deputy Commissioner, Tumkur, Camp, Mysore.

I have the honor to be,
sir,
Your most obedient servant.

For Deputy Commissioner,
Tumkur District.
(Absent from the station).

AD. 7/10.

RA 89-26-9

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Before the Government of His Highness the Maharaja of Mysore.

Rep: Assembly (Revision) Petition Appeal No. of 1927-28.

Petitioner
~~Appellant~~. Vs. Opponent
~~Respondent~~

G.S. Rajagopalachar
Advocate
Tumkur

G. Nanjappa
Pleader
Gubbi

Subject.

(Revision of Government order No. Rev 248
Rel 210 D(1.10.27 dismissing the appeal petition of the petitioner against the order of the Deputy Commissioner, Tumkur dt. 22.6.27 in RA 89-26-4 declaring the opponent as a member of the (Rep: Assembly) from the Gubbi Urban Constituency.

Order No. Rel 825-7 D(26.5.28

~~Government have heard the advocate for the petitioner.~~ Heard arguments in the matter regarding the meaning in the Voting papers should not be misinterpreted very strictly and as Mandatory but must be

should be treated as merely illustrative
and that Voters should be given the liberty
of adopting any method they choose of
recording their preference for the Candidates
so long as their intention can be clearly gathered.
This view is no doubt supported by certain
judicial decisions in England and in British
India though other views have also been held
in some cases. The Government have no
information as to the exact wording of the rules
on which these decisions are based, but the
rules in Mysore are certainly mandatory
in their form. Even granting for purposes
of argument the contention on behalf of
the petitioner, Government are unable to agree
~~on this~~ that the various markings on the
Voting papers in question disclose an intention
free from doubt on the part of the Voters concerned
to vote for the petitioner. In the result, Govern-
ment see no reason to reconsider their decision
against the petitioner Mr. Rajagopalachar. The
petition is dismissed.

Secy to Govt Law Department

To The Dy Comr Tumkur together with his letter No A2-302-26 dated 7.10.27
To Mr. C. Rajagopalachary [illegible] Vakil Tumkur

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BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

REPRESENTATIVE ASSEMBLY REVIEW PETITION of 1927-28.

Petitioner:	Vs.	Opponent
G. Rajagopalachar, Advocate, Tumkur.		G. Murigappa, Pleader, Gubbi.

Subject.

Review of Government Order No. Rel.210/R.A.89-26-4 dated 1st October 1927 dismissing the appeal petition of the petitioner against the order of the Deputy Commissioner, Tumkur District, ~~xxxxxxx~~ declaring the opponent as a member of the Representative Assembly from the Gubbi Urban Constituency.

Order No. Rel 825-7/R.A 89-26-9

Dated Bangalore, 26th May 1928.

The main argument urged on behalf of the petitioner is that the rules regarding the marking in the voting papers - should not be interpreted very strictly and as mandatory but that they should be treated as merely illustrative and that voters should be given the liberty of adopting any method - they choose of recording their preference for the candidates so long as their intention can be clearly gathered. This view is no doubt supported by certain judicial decisions in England and in British India though other views have also - been held in some cases. Government have no information as to the exact wording of the rules on which these decisions - are based, but the rules in Mysore are certainly mandatory in their form. Even granting for purposes of argument the contention on behalf of the petitioner, Government are unable to agree that the various markings on the voting papers in question disclose an intention free from doubt on the part of the voters concerned to vote for the petitioner. In the result

Government

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Government see no reason to reconsider their decision against the petitioner Mr. Rajagopalachar. The review petition is dismissed.

For Secretary to Government,
Law Department.

To

1. The Deputy Commissioner, Tumkur District together with records received with his letter No. A.2-302-26 dated 7th October 1927
2. Mr. G. Rajagopalachar, Advocate, Tumkur and
3. Mr. G. K. Murigappa, Pleader, Gubbi.